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ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
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February 3, 2012

Ms. Margo Oge
Director
Office of Transportation and Air Quality
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. Oge:

The Renewable Fuel Standard (RFS) was created in the Energy Policy Act of 2005, and greatly expanded with the Energy Independence and Security Act of 2007. The Committee on Energy and Commerce is responsible for oversight of the Environmental Protection Agency's (EPA) administration of the RFS under the Clean Air Act, and a number of issues has emerged that warrant attention. Among them is a serious problem of fraud that, if not properly addressed by the agency, could cause significant problems in the nation's motor fuels markets.

Specifically, after a lengthy investigation, EPA has discovered that a considerable number of tradable credits for renewable fuels, called Renewable Identification Numbers (RINs), may have been fraudulently created and sold. Legal proceedings have been launched against Clean Green Fuel LLC (Clean Green), a company that was registered with EPA and that allegedly sold 9 million dollars of fraudulent biodiesel RINs on the agency's computerized trading system. These RINs were supposed to represent 21 million gallons of actual fuel produced, but Clean Green allegedly had no facilities to make biofuels and all of its RINs were invalid, according to EPA. On November 7, 2011, EPA sent 24 Notices of Violation (NOVs) to refiners, distributors, and other obligated parties who were purchasers of these invalid RINs.

Along with other penalties, EPA is requiring the recipients of these NOVs to replace the invalid RINs with a sufficient number of valid ones in order to meet their respective Renewable Volume Obligations (RVOs) under the RFS. However, doing so is greatly complicated by the fact that EPA is believed to be investigating other companies, and it is very difficult to know which biofuel RINs are valid.

As a result, the risk of unknowingly buying problematic RINs is great and so the renewable fuels marketplace is in turmoil. Further compounding an already difficult situation are settlement agreements EPA sent in January to NOV recipients in the Clean Green matter. The Committee understands that additional NOVs resulting from other investigations were issued this week, roiling the RIN markets further. Many market participants – including small biofuel producers whose continued existence is possibly jeopardized through no fault of their own – have been adversely impacted. The costs of this turmoil ultimately will be borne by consumers. These fraud and abuse issues in the RFS, and our understanding of EPA's related enforcement practices, may lead to a need for Congressional action.

Given current statutory mandates for renewables in the nation's fuel supply, eliminating uncertainty and restoring the proper functioning of RIN markets is vital for a competitive fuels marketplace—an essential ingredient to ensure consumers have ample and affordable fuel. We want to be sure restoring functional RIN markets is done expeditiously and in an equitable manner.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we seek information regarding EPA's administration of the RFS as it relates to renewable fuels markets. We request that you provide Committee staff a briefing on current investigations into program fraud and written responses to the following questions and the requested documents by February 15, 2012:

1. Please provide a detailed chronology of EPA's actions with regard to Clean Green as well as the agency's communication of these actions with the regulated community, including, but not limited to, when EPA first learned that the company's RINs may be invalid, and when the purchasers of these RINs were notified.
2. Does EPA consider its communications with the regulated community prior to the NOVs to have been adequate?
 - a. Is there a risk that obligated parties may purchase RINs from companies currently under investigation by EPA but for which the agency has not informed the marketplace?
 - b. Explain EPA's process, procedures, or criteria for informing, including when to inform, the RIN marketplace of other potentially fraudulent RINs and include a description of when and how this process was developed.
 - c. Provide all documents relating to the development of the agency's process, procedures, or criteria for informing the RIN market of potentially fraudulent RINs.
3. Explain the basis for EPA's apparent position that participants in EPA's Moderated Transaction System (EMTS) should have known or been able to ascertain that Clean Green was a fraudulent operation.

- a. Explain EPA's process for registering and validating producers that participate in the EMTS.
 - b. Explain what controls EPA has put in place to protect program integrity, particularly in relation to participation in the EMTS.
4. EPA has stated that the buyers of RINs, regardless of their reliance on the EMTS and on EPA's registration process for biodiesel producers, must nonetheless perform "due diligence."
 - a. What does due diligence require?
 - b. Please describe the measures that could have been undertaken by obligated parties that would have prevented the purchase of invalid RINS such as those allegedly originating from Clean Green.
5. What investigative resources and time were expended by EPA to ascertain that Clean Green's RINs were invalid?
 - a. Do smaller obligated parties have the resources to conduct such investigations?
 - b. What analysis has EPA performed to ensure smaller obligated parties are able to compete in the EMTS under EPA's due diligence standards?
6. What specific steps is EPA taking to reduce uncertainty in the renewable fuels markets since the issuance of the NOV's and to reduce the impact on RIN sales and prices?
 - a. Is EPA considering structural changes to RIN markets in order to reduce the likelihood of fraud? If so, please describe these potential changes.
7. Obligated parties have until February 28, 2012, to comply with their Renewable Volume Obligation (RVOs) for 2011. Given the current challenge of finding valid biofuel RINs, has EPA considered an extension of this deadline or any other near-term measures that may facilitate compliance?
 - a. Given the difficulties finding valid RINs to replace invalid ones, has EPA considered expanding the universe of allowable replacement RINs, broadening the carryover provisions, or foregoing the requirement of procuring replacement RINs?
 - b. Does EPA believe that there is sufficient latitude under existing law to create such flexibility?
8. In EPA's January 9, 2012, Final Rule for the 2012 RFS, the agency recognized the problems caused by invalid RINS being bought and sold and thereby creating violations at each step. In the section entitled "RIN Retirement Provision for Error Correction," EPA included measures allowing improperly generated RINS to nonetheless be used for

compliance by obligated party purchasers, while EPA focused on addressing the source of the invalid RINs. Although this solution was only contemplated for RINs generated in error rather than fraud, have you considered expanding this flexibility to the current situation?

9. In the preamble to EPA's March 26, 2010, Final Rule on the RFS program, the agency made clear that it "would normally look first to the generator or seller of the invalid RINs both for payment of penalty and to procure sufficient valid RINs to offset the invalid RINs." However, the agency's NOVs focused first on the ultimate purchasers as the parties to be penalized and made responsible for procuring valid RINs. What is the reason for this approach?

We request that you adhere to the instructions relating to the requests for documents attached to this letter. Thank you for your prompt attention to this request. Should you have any questions, please contact Ben Lieberman or Peter Spencer of the Majority Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Ed Whitfield
Chairman
Subcommittee on Energy and Commerce

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power